



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/605,789	10/27/2003	Thomas L. Toth	GEMS8081.193	2788
27061	7590	06/17/2005	EXAMINER	
ZIOLKOWSKI PATENT SOLUTIONS GROUP, SC (GEMS)			KAO, CHIH CHENG G	
14135 NORTH CEDARBURG ROAD			ART UNIT	
MEQUON, WI 53097			PAPER NUMBER	
			2882	

DATE MAILED: 06/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

H.A

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/605,789

Applicant(s)

TOTH ET AL.

Examiner

Chih-Cheng Glen Kao

Art Unit

2882

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 24 May 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: 8-10.
Claim(s) rejected: 1,2,5,6,8-14 and 16-23.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☒ Other: See Continuation Sheet.


EDWARD J. GLUCK
SUPERVISORY PATENT EXAMINER

Continuation of 11. does NOT place the application in condition for allowance because:

Regarding claim 1, Applicants argue that one of ordinary skill in the art would not have been motivated to use the filters of Moore (configured for linear movement) in the system of Romeas (configured for rotational movement). The Examiner disagrees. The system of Romeas is configured for linear movement along rails (figs. 7 and 8). Therefore, one having ordinary skill in the art would have been motivated to use the filters of Moore (configured for linear movement) in the system of Romeas (configured for linear movement) to better compensate for variations in path length of examining radiation through the body of a patient (col. 1, lines 5-9, of Moore).

Applicants further argue that Moore does not include two filters having tails positioned at a distal end relative to an x-ray source. In response to Applicants' arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. Romeas discloses two filters having tails (fig. 5, respective right and left sections of #17a and 18b) positioned at a distal end relative to an x-ray source (fig. 5, source of #3). The combination of references makes Applicants' claims obvious.

Applicants further argue that "the Examiner's proffered modification of Romeas by the teachings of Moore does not evince a reasonable expectation of success", due to the different filter movements of Romeas and Moore. The Examiner disagrees. As stated before, the system of Romeas is configured for linear movement along rails (figs. 7 and 8). Although Romeas does not specifically disclose a motor assembly for moving filters linearly along the rails, there is inherently a means for linearly moving filters. Moore teaches a motor assembly as a means for linearly moving filters. One of ordinary skill in the art would be motivated to make such a modification to reduce manual labor for a user, and such a combination would not change the principles of operation of these references.

In response to Applicants' argument that the Examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the Applicants' disclosure, such a reconstruction is proper.

Regarding claim 11, in response to Applicants' argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which Applicants relies (i.e. the curved portion of one filter being oriented in the +y direction and the curved portion of the other filter being oriented in the -y direction) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. Popescu does teach filters facing each other (fig. 3, #22 and 23).

Regarding claim 17, Applicants argue that Schmidt teaches only one filter. The Examiner disagrees. The aperture plates (fig. 1, #12a-12d) are filters. Even if the aperture plates allegedly behave like a collimator, they are still filters. Therefore, Schmidt discloses at least two moveable filters (fig. 1, #12a-12d) and a stationary filter (fig. 1, #15).

Applicants further argue that the incorporation of motor assemblies into the system of Schmidt would not be obvious. The Examiner disagrees. Schmidt teaches that the moving parts are used to define an irradiation field of a particular shape with moving means (fig. 1). Moore also teaches moving parts used to define an irradiation field of a particular shape moving means or a motor assembly (fig. 1a). Therefore, it would have been obvious, to one having ordinary skill in the art at the time the invention was made, to incorporate the motor assemblies of Moore into the system of Schmidt for providing more flexibility in shaping a profile or irradiation field (fig. 2a) as implied from Moore.

In conclusion, Applicants' arguments are not persuasive, and the claims remain rejected.

Continuation of 13. Other: Claims 8-10 will be objected to because they depend on cancelled claim 7.